

IN THE COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE JURISDICTION
WRIT PETITION NO.2517 OF 2004

Wyeth Ltd Petitioners
VS.
The Provident Fund Commissioner ...Respondents

Mr.P.K.Rele, Sr.Adv i/by.Piyush Shah
for the petitioner.

Ms.S.V.Bharucha for respondent nos.1 and 2.

CORAM: S.C. DHARMADHIKARI, J.
16th January, 2007.

P.C :-

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges an order dated 21.4.2004 (Exhibit A) which is passed admittedly in proceedings under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions

Act, 1952.

2. Ms.Bharucha appearing for respondent nos.1 and 2 states, that the order passed by the Assistant Provident Fund Commissioner, Maharashtra on 21.4.2004 (impugned order) is an appealable order. She submits that an appellate authority/tribunal is set up under the Provident Funds Act. Earlier, number of petitions were admitted by this court because the appellate authority/tribunal was not constituted. It was not functional because the appointment of the Presiding Officer was not made.

3. Now, the tribunal is constituted and the Presiding Officer appointed by the Union of India/Central Government has taken charge. In such circumstances, she submits that, this court has consistently taken a view that the petitioner should be relegated to the alternate remedy which is equally efficacious. She states that all issues and questions of facts and law could be gone into in such an appeal. Further, it would be open for the petitioner to apply for interim reliefs/stay during

the pendency thereof.

4. Mr.Rele, Learned Senior Counsel appearing for the petitioner, while not disputing the existence of an alternate and equally efficacious remedy, submits, that the writ petition has been admitted and pending for considerable length of time. In such circumstances and when interim orders are granted by this court, despite the existence of alternate remedy, this court should hear the writ petition on merits.

5. Ms.Bharucha, has invited my attention to the order dated 13.9.2006 passed in Writ Petition No. 3086 of 2003. She submits, that, even this petition was admitted by this court but at the final hearing, this court relegated the petitioner to the remedy of appeal.

6. She submits that, there are several orders passed by this court taking a similar view.

7. In my view, once the order passed by the

Assistant Provident Fund Commissioner is appealable and it is not pointed out that the appellate authority/tribunal constituted under the Act would not be in the position to deal with all issues and questions raised in this petition, then their interest and justice would be subserved, if the petitioner is relegated to the remedy of appeal. More so, when an Appeal is already filed by it.

8. Considering the averments in paragraph 40 of the petition, it would be appropriate to dispose off the present petition without adjudicating its merits and by permitting the petitioner to challenge the impugned order and all actions in pursuance thereto in the pending Appeal. It would also be open for the petitioner to apply for interim reliefs/stay during the pendency of the appeal and both the application for stay as well as the appeal shall be decided by the appellate authority on merits and in accordance with law. It is further directed that if the petitioner has not already filed an Application for interim relief/stay it shall file the same within a period of 12 weeks from today and the first

respondent would not raise the issue of delay and laches.

9. With a view to enable the petitioner to apply for interim reliefs, the order passed by this court on 30.8.2004 shall continue for a period of 12 weeks from today. Petition disposed off in above terms.

sd/-

(S.C.DHARMADHIKARI, J)